

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC

Plaintiff,

v.

DEFENDANTS LISTED ON EXHIBITS A
AND B,

Defendants.

**ORDER AUTHORIZING THE CONTINUED DEPOSITION OF
BERNARD L. MADOFF ON DAY TWO TOPICS**

WHEREAS, on August 24, 2016, this Court held a hearing and issued a bench ruling approving the requests of the Participating Customers¹ to depose Bernard L. Madoff (“Madoff”);

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Madoff Deposition Order.

WHEREAS, on September 29, 2016, this Court entered the Order Authorizing the Deposition of Bernard L. Madoff (the “Madoff Deposition Order,” ECF No. 14213), permitting testimony on the Day 1 Deposition Topics;

WHEREAS, on December 20, 2016, the Participating Customers deposed Madoff on the Day 1 Deposition Topics;

WHEREAS, on January 19, 2017, this Court entered the Order Authorizing the Continued Deposition of Bernard L. Madoff (ECF No. 14905), permitting further testimony on the Day 1 Deposition Topics;

WHEREAS, the Participating Customers and the Trustee deposed Madoff on the Day 1 Deposition Topics on April 26 and April 27, 2017;

WHEREAS, the transcript of deposition held on April 26 and April 27, 2017 was received on May 10, 2017;

WHEREAS, pursuant to the Madoff Deposition Order ¶ C, counsel for the Trustee and/or the Participating Customers were permitted to file with the Court a request for a second deposition day, specifically identifying any proposed deposition topics;

WHEREAS, the Participating Customers who timely filed requests (the “Day 2 Deposition Requests”) to participate in the continued deposition of Madoff are identified on Exhibit A annexed hereto (the “Initial Day 2 Participants”);

WHEREAS, on June 29, 2017, this Court held a hearing on the Day 2 Deposition Requests, adjourning the matter to July 26, 2017;

WHEREAS, on July 26, 2017, this Court held a continued hearing on the Day 2 Deposition Requests and considered all of the requests, objections, and arguments of counsel raised at the

hearings held on June 29 and July 26, 2017, and approved, in part, the Day 2 Deposition Requests to the extent set forth during the hearing held on July 26, 2017;

WHEREAS, on August 10, 2017, certain customers represented by Chaitman LLP and Dentons, who are not Initial Day 2 Participants, sought to participate in the continued deposition of Madoff;

WHEREAS, on August 22, 2017, a hearing was held to determine whether these additional customers could participate in the continued deposition of Madoff;

WHEREAS, the Trustee, Chaitman LLP and Dentons US LLP have agreed that certain customers who are not Initial Day 2 Participants may participate in the continued deposition of Madoff, as identified on Exhibit B annexed hereto (the “Additional Day 2 Participants,” collectively with the Initial Day 2 Participants, “Day 2 Participants”);

IT IS HEREBY ORDERED THAT:

The continued deposition of Madoff (the “Day 2 Deposition”) is authorized subject to the terms and limitations of this Order. The Day 2 Participants and the Trustee are authorized to inquire solely regarding the following topics (the “Day 2 Deposition Topics”):

1. The statements contained in the Federal Bureau of Investigation form FD-302 memorializing a proffer meeting with Bernard Madoff held on December 16, 2008;
2. The Day 2 Participants’ accounts held with Bernard L. Madoff Investment Securities (“BLMIS”), or Bernard L. Madoff, including the history of Day 2 Participants’ accounts and the extent, if any, to which BLMIS or Madoff was directed to and did buy, sell and hold actual securities on behalf of the Day 2 Participants; and
3. Madoff’s understanding of the reports and other information contained on the reels of microfilm and any other documents produced by the Trustee to the Participating Customers

in 2017 and 2018 prior to the completion of the Day 2 Deposition, concerning whether Madoff or BLMIS used customer funds to purchase securities shown on the customer statements of the Day 2 Participants or held such securities for his, or BLMIS', own account.

The following limitations and procedures are imposed on Madoff's deposition:

A. For each day of examination on the Day 2 Deposition topics, except for any counsel that may appear on Madoff's behalf, two attorneys for the Trustee and two attorneys for the Day 2 Participants may appear (collectively, "Authorized Counsel"); no other appearances are authorized.

B. Helen Davis Chaitman of Chaitman LLP is appointed lead representative counsel ("Lead Counsel") for the Day 2 Participants.

C. Examination on the Day 2 Deposition Topics may take place over the course of four (4) days for a maximum of seven (7) hours per day, on dates as soon as practicable, but subject to the discretion of the warden of the Federal Correctional Institution located in Butner, North Carolina, as follows:

- i. On the first and second day, the Day 2 Participants may inquire as to the Day 2 Deposition Topics, provided that the Trustee may inquire as to the Day 2 Deposition Topics as time permits on the first or second day;
- ii. On the third day, counsel for the Trustee may inquire as to the Day 2 Deposition Topics and any other areas of cross-examination;
- iii. On the fourth day, the Day 2 Participants may conduct re-direct, provided that the Trustee shall have adequate time for any additional cross-examination based on the Day 2 Participants' re-direct;

- iv. The Trustee's counsel and counsel for the Day 2 Participants shall arrange with the court reporter for the rough transcript of each deposition day to be circulated to the Trustee's counsel and all counsel for the Day 2 Participants as soon as possible after each deposition day ends and no later than 8:00 pm eastern time on that deposition day.

D. Authorized Counsel are prohibited, at any point during Madoff's deposition, from asking Madoff any questions beyond the scope of the Day 2 Deposition Topics, including any questions about (i) Jeffry M. Picower, Capital Growth Company, Decisions Inc., Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, LAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLM Partnership, JMP Limited Partnership, Jeffry M. Picower Special Company, Jeffry M. Picower P.C., The Picower Foundation, The Picower Institute for Medical Research, The Trust f/b/o Gabrielle H. Picower, and Barbara Picower, individually, as Executor of the Estate of Jeffry M. Picower, as Trustee for The Picower Foundation and as Trustee of the Trust f/b/o Gabrielle H. Picower (collectively, the "Picower Parties") or their agents, or the Picower Parties' BLMIS accounts (other than as set forth in the transcript of hearing dated August 24, 2016 in this matter). To the extent Madoff testifies regarding the Picower Parties or their BLMIS accounts in responding to questions on any of the Day 2 Deposition Topics, any information specific to the Picower Parties' BLMIS accounts shall be redacted whenever practicable and Authorized Counsel may follow up with questions concerning the Picower Parties only to the extent that such follow up questions relate directly to the Day 2 Deposition Topics. However, Authorized Counsel may not use any testimony by Madoff regarding Picower or the Picower Parties

to deviate from the Day 2 Deposition Topics, including but not limited to inquiring about Picower's conduct that is not directly related to the Day 2 Deposition Topics.

E. No testimony elicited during Madoff's Day 1 or Day 2 Deposition may be used in any way in connection with the Profit Withdrawal Litigation, as described in the Order Establishing Schedule for Limited Discovery and Briefing on Profit Withdrawal Issue (*see* ECF No. 10266).

F. In advance of the deposition, Chaitman LLP will provide a copy of this Order to Madoff.

G. Absent further order of the Court, the deposition testimony of Madoff and the transcript(s) (the "Transcripts") thereof on the Day 1 and Day 2 Deposition Topics shall not be used by any person or entity for any reason as it relates to the Picower Parties, including but not limited to in any pending or future litigation that may be brought against the estate of Jeffry M. Picower, the Picower Parties or their agents, or any related person or entity.

H. The Transcripts for each day of Madoff's deposition shall remain confidential and under seal for twenty-one (21) days after the date that the final Transcript of each day of deposition testimony on the Day 2 Deposition Topics is provided to counsel to the Trustee, representative Lead Counsel for the Day 2 Participants, the Picower Parties and SIPC, or, if any party seeks to seal, strike or redact any portion of the Transcripts within the 21-day period, then solely as to that portion of the Transcript, the day after a final, non-appealable order is entered on such motion(s) (the "Confidentiality Period"). Each of the Transcripts shall automatically be re-designated as not confidential when the

Confidentiality Period for each of the Transcripts expires, subject to any sealing, striking or redactions that the Court may have ordered.

I. During the Confidentiality Period, the Transcripts and contents of Madoff's deposition may not be disclosed, except to Authorized Counsel and their retained experts, if any, for the Trustee, the Day 2 Participants, the Picower Parties and SIPC, all of whom, including the experts, shall maintain the confidentiality of the Transcripts and their contents and all of whom may file with the Court, under seal, requests to strike and/or redact any questions or answers in the Transcripts, including any testimony concerning (i) any topics other than the approved Day 2 Deposition Topics, as limited by Paragraph D above, (iii) the Picower Parties or their agents or related parties, or any BLMIS accounts held by or on behalf of any of the Picower Parties.

J. Any requests on motions to strike and/or redact any part of Madoff's deposition Transcripts, and any responses thereto, shall be filed under seal pursuant to Section III.C of this Court's Procedures for the Filing, Signing and Verification of Documents by Electronic Means promulgated under Local Rule 5005-2, shall be served on counsel for the Trustee, the Day 2 Participants, the Picower Parties and SIPC at the time of filing under seal, and shall remain confidential during the Confidentiality Period.

K. In the event that counsel for the Trustee, the Day 2 Participants, the Picower Parties or SIPC receives any request, subpoena or other process seeking disclosure of Madoff's deposition Transcripts or information related to Madoff's testimony during the Confidentiality Period, such counsel, within three business days thereof, shall notify the Court and counsel for the Trustee, the Day 2 Participants, the Picower Parties and SIPC of

the subpoena or other request, and shall await direction from the Court before responding to such request, subpoena, or other process.

L. As to the Day 2 Participants, the Court extends fact discovery for the limited and sole purpose of taking Madoff's deposition. Other than for that purpose, the deadlines in the applicable case management orders remain unchanged other than as set forth in the transcript of hearing dated June 29, 2017 in this matter. Notwithstanding the dates set forth in the case management orders, counsel for the Trustee, the Day 2 Participants, the Picower Parties and SIPC have the right to move the Court for further discovery based upon Madoff's testimony other than as set forth in the transcript of hearing dated June 29, 2017 in this matter.

M. Only the Day 2 Participants are permitted to participate in Madoff's Day 2 Deposition.

N. After Madoff's deposition on the Day 2 Deposition Topics, no further testimony may be taken from Madoff on the Day 1 Deposition Topics or Day 2 Deposition Topics without further order of the Court.

O. Once the Day 2 Deposition completed, there will be no additional testimony of Madoff unless the Court determines additional testimony is needed based on a demonstrated showing of need and relying on only those documents made available in discovery after the completion of the Day 2 Deposition.

P. This Court shall retain exclusive jurisdiction over the enforcement, implementation, and interpretation of this Order.

Dated: New York, New York
September 11th, 2017

/s/ STUART M. BERNSTEIN
Hon. Stuart M. Bernstein
United States Bankruptcy Judge

No.	Adv. Pro. No.	Case Name	Counsel
1	10-04292	Robert Roman	Chaitman LLP
2	10-04302	Joan Roman	Chaitman LLP
3	10-04321	Herbert Barbanel, et al.	Chaitman LLP
4	10-04327	Gertrude E. Alpern Revocable Trust, et al.	Chaitman LLP
5	10-04367	Benjamin T. Heller	Chaitman LLP
6	10-04397	Fern C. Palmer Revocable Trust Dtd 12/31/9, et al.	Chaitman LLP
7	10-04438	Estate of Seymour Epstein, et al.	Chaitman LLP
8	10-04446	Trust Dated 12/6/99 Walter and Eugenie Kissinger, et al.	Chaitman LLP
9	10-04469	Carol L. Kamenstein, individually and in her capacity as joint tenant	Chaitman LLP
10	10-04487	Robert Weintraub, et al.	Chaitman LLP
11	10-04503	Judd Robbins	Chaitman LLP
12	10-04541	Kenneth W Perlman, et al.	Chaitman LLP
13	10-04545	Jerome Goodman, Individually, as trustee for The Jerome Goodman Child	Chaitman LLP
14	10-04570	Jacob M. Dick Rev Living Trust DTD 4/6/01, et al.	Chaitman LLP
15	10-04614	Robert S. Whitman	Chaitman LLP
16	10-04655	Jaffe Family Investment Partnership, et al.	Chaitman LLP
17	10-04718	The Jordan H. Kart Revocable Trust, et al.	Chaitman LLP
18	10-04728	Bruno L. Di Giulian	Chaitman LLP
19	10-04748	Mark Horowitz	Chaitman LLP
20	10-04749	Philip F. Palmedo	Chaitman LLP
21	10-04752	Kuntzman Family LLC, et al.	Chaitman LLP
22	10-04762	James M. Goodman	Chaitman LLP
23	10-04798	Janet Jaffe, et al.	Chaitman LLP
24	10-04803	The Estelle Harwood Family Limited Partnership, et al.	Chaitman LLP
25	10-04806	Kenneth M. Kohl, as an individual and as a joint tenant, et al.	Chaitman LLP
26	10-04809	Edyne Gordon NTC	Chaitman LLP
27	10-04818	Toby Harwood	Chaitman LLP
28	10-04823	Frank DiFazio, et al.	Chaitman LLP
29	10-04826	Boyer Palmer	Chaitman LLP
30	10-04878	Lisa Beth Nissenbaum Trust, et al.	Chaitman LLP
31	10-04912	Harry Smith Revocable Living Trust, et al.	Chaitman LLP
32	10-04920	Glenhaven Limited, et al.	Chaitman LLP
33	10-04931	Cantor, et al.	Chaitman LLP
34	10-04956	D. M. Castelli	Chaitman LLP
35	10-04961	Sylvan Associates LLC f/k/a Sylvan Associates Ltd Partnership, et al.	Chaitman LLP
36	10-04979	James M. New Trust dtd 3/19/01, et al.	Chaitman LLP
37	10-04991	Guiducci Family Limited Partnership, et al.	Chaitman LLP
38	10-04995	Trust U/Art Fourt O/W/O Israel Wilenitz, et al.	Chaitman LLP
39	10-05026	Walter Freshman Trust A, a Florida trust, et al.	Chaitman LLP
40	10-05037	Barbara L. Savin	Chaitman LLP
41	10-05079	Estate of James M. Goodman, et al.	Chaitman LLP
42	10-05104	The Gloria Albert Sandler and Maurice Sandler Revocable Living Trust	Chaitman LLP
43	10-05124	The Lawrence J. Ryan and Theresa R. Ryan Revocable Living Trust, et al.	Chaitman LLP
44	10-05128	JABA Associates LP, et al.	Chaitman LLP
45	10-05133	Boyer H. Palmer, individually, etc, et al.	Chaitman LLP
46	10-05151	Palmer Family Trust, etc., et al.	Chaitman LLP
47	10-05157	The Harnick Brothers Partnership, et al.	Chaitman LLP
48	10-05184	Laura Ann Smith Revocable Living Trust, et al	Chaitman LLP
49	10-05196	Whitman 1990 Trust U/A DTD 4/13/90, etc., et al	Chaitman LLP
50	10-05312	Doron Tavlin Trust U/A 2/4/91, et al.	Chaitman LLP
51	10-05377	Richard G. Eaton	Chaitman LLP
52	10-05420	Gunther K. Unflat, et al.	Chaitman LLP
53	10-05435	Keith Schaffer, et al.	Chaitman LLP
54	10-05130	Barbara Kotlikoff Harman	Chaitman LLP
55	10-05209	Lapin Children LLC	Dentons US LLP
56	10-04415	The Estate of Barbara Berdon, et al.	Dentons US LLP
57	10-04486	The Norma Shapiro Revocable Declaration of Trust Under Agreement Date	Dentons US LLP
58	10-04702	S&L Partnership, a New York partnership, et al.	Dentons US LLP
59	10-04861	Harold J. Hein	Dentons US LLP
60	10-05236	Toby T. Hobish, et al	Dentons US LLP
61	10-04882	Laura E. Guggenheimer Cole	Dentons US LLP
62	10-04362	Sage Associates, et al.	McDermott Will & Emery LLP
63	10-04400	Sage Realty, et al.	McDermott Will & Emery LLP
64	10-05257	Edward A. Zraick, Jr., individually and as joint tenant, et al.	Hunton & Williams LLP

No.	Adv. Pro. No.	Case Name	Counsel
1	10-04709	Andrew M. Goodman	Chaitman LLP
2	10-04837	Leslie Ehrlich f/k/a Leslie Harwood , et al.	Chaitman LLP
3	10-04905	Train Klan, a Partnership, et al.	Chaitman LLP
4	10-05150	Plafsky Family LLC Retirement Plan, Robert Plafsky, et al.	Chaitman LLP
5	10-04539	The Gerald and Barbara Keller Family Trust, et al.	Chaitman LLP
6	10-04914	Edyne Gordon	Chaitman LLP
7	10-05127	Atwood Management Profit Sharing Plan & Trust, etc., et al.	Chaitman LLP
8	10-04491	Elaine Dine Living Trust dated 5/12/06, et al.	Chaitman LLP
9	10-04562	Robert F. Ferber	Chaitman LLP
10	10-04352	RAR Entrepreneurial Fund LTD, et al.	Chaitman LLP
11	10-04753	Carla Ginsburg	Chaitman LLP
12	10-05116	Leonard J. Oguss Trust, et al.	Chaitman LLP
13	10-04610	The Whitman Partnership, et al.	Chaitman LLP
14	10-04644	Russell L. Dusek	Chaitman LLP
15	10-04648	Peter D. Kamenstein	Chaitman LLP
16	10-04889	Estate of Robert Shervyn Savin, et al.	Chaitman LLP
17	10-04489	Marlene Krauss	Chaitman LLP
18	10-04768	Placon2, William R. Cohen, et al.	Chaitman LLP
19	10-04867	Estate of Steven I. Harnick, et al.	Chaitman LLP
20	10-04740	Robert Hirsch, as an individual, and as joint tenant, et al.	Chaitman LLP
21	10-04428	Allen Meisels	Chaitman LLP
22	10-04712	Joseph S. Popkin Revocable Trust Dated February 9, 2006	Chaitman LLP
23	10-04621	Donald A. Benjamin	Chaitman LLP
24	10-05058	America Israel Cultural Foundation, Inc	Dentons US LLP
25	10-04921	Stanley T. Miller	Dentons US LLP
26	10-04357	James Greiff	Dentons US LLP
27	10-04401	Rose Gindel Trust, et al.	Dentons US LLP
28	10-04925	Alvin Gindel Revocable Trust, a Florida trust, et al.	Dentons US LLP
29	10-04332	Barry Weisfeld	Dentons US LLP
30	10-04672	Sidney Cole	Dentons US LLP
31	10-05424	The Frederica Ripley French Revocable Trust, et al.	Dentons US LLP
32	10-05085	Eugene J. Ribakoff 2006 Trust, et al.	Dentons US LLP
33	10-05384	Neil Reger Profit Sharing Keogh, et al.	Dentons US LLP